IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1667

NADINE MONROE, ET ALS,
Petitioners

v.

L. PATRICK GRAY, ET ALS,
Respondents

and

HENRY CONGDON, ET ALS,
Petitioners

v.

L. PATRICK GRAY, III, ET ALS,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENTS, STATE JUDGES, REFEREES AND GRIEVANCE COMMITTEES IN OPPOSITION

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State Judges,
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QUESTION PRESENTED FOR REVIEW

Should not a petition for certiorari be denied when the United States District Court, based upon judicial immunity and additional grounds, dismissed a Civil Rights suit for damages and further relief against State judges, referees, Grievance Committee members and others?

STATEMENT OF THE CASE

This action was inspired by the dissatisfaction of plaintiff-petitioner Nadine Monroe with the participation of various individuals in a lengthy state court divorce proceeding. The original federal Complaint was filed *pro se* on February 9, 1976 in Civil No. H 76-91 by the plaintiff-petitioner Nadine Monroe and her two children, Floyd, Jr. and Lisa, alleging conspiracies to deprive them of their constitutional rights, and one conspiracy in violation of the antitrust laws of the United States. On April 28, 1976 a Motion to Amend the Complaint was filed to add a number of additional plaintiffs and defendants. This motion was denied on the grounds that none of the additional plaintiffs had any interest in the specific case nor did any of the proposed defendants cause the plaintiffs any injury. The denial of this motion prompted an independent suit by the rejected plaintiffs, Civil No. H 76-239, which raised issues identical to those in the *Monroe* suit and which was disposed of with the *Monroe* suit in one ruling by the Court below.

The present Further Amended Complaint in Civil No. H 76-91 was filed on May 12, 1976 wherein the plaintiffs sought money damages and other relief from all the defendants. Each of the defendants filed motions to dismiss which were granted. An appeal was taken to the United States Court of Appeals for the Second Circuit which, in a judgment filed on February 14, 1977, affirmed the judgment of the District Court on the opinion of said Court with costs to be taxed against the appellants. (App. p. 1a) This petition for a writ of certiorari seeks a review of the judgment of the Second Circuit, alleging jurisdiction under 28 U.S.C. 1254(1).

ARGUMENT

The District Court analyzed the various Complaints to disclose three separable claims and addressed each individually.

I. THE DIVORCE CONSPIRACY

The original conspiracy was alleged to have arisen during state court divorce proceedings between the plaintiff-petitioner Ms. Monroe and her husband. It was also claimed that Mr. Monroe, his accountant, and his lawyers conspired with Troland, the Presiding Referee of the New London County Superior Court, and the named attorney for Ms. Monroe to deprive her of due process and equal protection of the law. Jurisdiction was alleged to exist pursuant to 28 U.S.C. 1331, 1343, 42 U.S.C. 1983, 1985, 1986 and 1988. The Court below was correct in summarily dismissing the claims under 28 U.S.C. 1331 and 42 U.S.C. 1985, 1986 and 1988 on the grounds that the Complaint failed to state facts sufficient to support jurisdiction under those sections. (App. p. 4a, f.n.2) Jurisdiction thus was treated under 42 U.S.C. 1983 and 28 U.S.C. 1343.

A. State Referee

Inasmuch as the allegations concerning Referee Troland indicate that the actions complained about arose out of his presiding at a divorce proceeding in a judicial capacity, the Court was correct in dismissing this Complaint against him on the grounds of judicial immunity.

In Connecticut, a State Referee is usually a retired judge who exercises the judicial power of the Court on cases referred to him by other judges.

Section 52-434 of the Connecticut General Statutes provides in pertinent part that:

"Each judge of the supreme court, each judge of the superior court and each judge of the court of common pleas who ceases or has ceased to hold office because of retirement other than under the provisions of section 51-49 shall be a state referee during the remainder of his life. The superior court or the court of common pleas may, with the written consent of the parties or their attorneys, refer any case pending before such court in which the issues have been closed to such a state referee who shall have and exercise the powers of the superior court or court of common pleas in respect to trial, judgment and appeal in such case. . . ."

Section 52-434a(a) provides that:

"In addition to the powers and jurisdiction granted to state referees under the provisions of section 52-434, a chief justice or judge of the supreme court, a judge of the superior court or a judge of the court of common pleas who has ceased to hold office as justice or judge because of having retired and who has become a state referee and has been designated as a trial referee by the chief justice of the supreme court shall have and may exercise, with respect to any civil matter referred by the chief court administrator, the same powers and jurisdiction as does a judge of the court from which such proceedings were referred."

This brings us to *Pierson* v. *Ray*, 386 U.S. 547, 553 (1967), where this Supreme Court stated:

". . . Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction, as this Court recognized when it adopted the doctrine, in Bradley v. Fisher, 13 Wall. 335, 20 L.Ed. 646 (1872). This immunity applies even when the judge

is accused of acting maliciously and corruptly, and it 'is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences.' (Scott v. Stansfield, L.R. 3 Ex. 220, 223 (1868), quoted in Bradley v. Fisher, supra, 349, note at 350.) It is a judge's duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that arouse the most intense feelings in the litigants. His errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden on judges would contribute not to principled and fearless decision-making but to intimidation."

As stated by Chief Judge Learned Hand in an earlier Second Circuit case, *Gregoire* v. *Biddle*, 177 F.2d 579 (2d Cir. 1949), *cert. den.* 339 U.S. 949, in extending immunity to the United States Attorney General and other law enforcement and immigration officials,

". . . to submit all officials, the innocent as well as the guilty, to the burden of a trial and to the inevitable danger of its outcome, would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties."

177 F.2d at 581.

This doctrine was recently reaffirmed in *Imbler* v. *Pachtman*, —— U.S. ——, 96 S.Ct. 984 (1976). See also *Lombardi* v. *Buckholdt*, Civ. No. H-75-221, *aff'd mem.*, (2d Cir. April 21, 1976). Clearly, then, Referee Troland is immune from a 1983 action.

II. THE GRIEVANCE COMMITTEE CONSPIRACY

This alleged conspiracy involves a number of claims. Ms. Monroe alleges a denial of due process and equal protection as a result of the refusal of the Grievance Committees of New London and Hartford Counties to prosecute her complaints against the attorneys involved in her state divorce action. She alleges that this refusal to act by the Grievance Committees was part of a major conspiracy of refusing to investigate complaints against lawyers made by private individuals. Also, she alleges that Judge Angelo Santaniello of the Connecticut Superior Court participated in this conspiracy by protecting the Grievance Committee of New London County and by not advising her of all of her rights. Jurisdiction is alleged to exist pursuant to 42 U.S.C. 1983 and 28 U.S.C. 1343.

A. The Judges

Inasmuch as the allegations against Judge Santaniello are directed to his actions in an official capacity and there are no allegations that he was acting without authority, the District Court was correct in dismissing the Complaint against him as he is immune from suit under 1983 actions. *Pierson* v. *Ray*, 386 U.S. 547 (1967); *Imbler* v. *Pachtman*, —— U.S. ——, 96 S.Ct. 984 (1976).

B. The Grievance Committees

The main complaint against the Grievance Committees concerns their alleged lack of disciplinary action for the wrongdoings of private attorneys engaged by the plaintiffs-petitioners. The committees are appointed by the Superior Court. It is the duty of the committees to inquire into, investigate and present to the Court offenses concerning the members of the Bar. Section 51-90, General Statutes. The State

Supreme Court has described the function of the committees as follows:

> ". . . The grievance committee is in no sense a party to the proceeding but an independent public body charged with the performance of a public duty in a wholly disinterested and impartial manner, . . ."
>
> *Grievance Committee* v. *Broder*, 112 Conn. 263, 265-266 (1930).

The Grievance Committees were certainly not responsible for any of the alleged acts of misconduct that the lawyers may have committed. For these alleged wrongs, the plaintiffs-petitioners were and are entitled to seek relief in the state courts. As stated by the United States Court of Appeals for the Second Circuit in *Fine* v. *City of New York*, 529 F.2d 70, 74 (2d Cir. 1975):

> ". . . Whatever cause of action he might have against his lawyer, whether sounding in professional malpractice, tort, or otherwise, is one of state law insufficient to vest a federal court with jurisdiction over the subject matter. . . ."
>
> See also: *Chaney* v. *State Bar of California*, 386 F.2d 962 (9th Cir. 1967), *cert. den.* 390 U.S. 1011.

Nor do the plaintiffs-petitioners have a constitutional right to demand that the attorneys be criminally prosecuted or professionally disciplined. As Mr. Justice Marshall stated in *Linda R. S.* v. *Richard D.*, 410 U.S. 614, 619 (1973):

> "The Court's prior decisions consistently hold that a citizen lacks standing to contest the policies of the prosecuting authority when he himself is neither prosecuted nor threatened with prosecution. (Citations

omitted.) Although these cases arose in a somewhat different context, they demonstrate that, in American jurisprudence at least, a private citizen lacks a judicially cognizable interest in the prosecution or non-prosecution of another. . . ."

Since the Supreme Court has held that as a private citizen Ms. Monroe lacks a judicially cognizable interest in the prosecution of the attorneys, the District Court was correct in dismissing this claim for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure. She cannot state a claim for denying her rights which she does not have.

III. NO VALID ANTITRUST CLAIM STATED

In their Complaint, the final conspiracy alleged by the plaintiffs-petitioners is the claim that the defendants conspired to "knowingly and wilfully restrain the practice of law, an interstate trade, to deny the plaintiffs and the general public the benefits of constitutional and legal protections, and set, maintain and enforce illegal minimum fee schedules; in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States and Title 15, U S C, Sections 1, 3, 13, 15 and 25, all of which was in violation of Title 18, U S C, Section 371; . . ."

Other than the one conclusory allegation, the Complaint fails to set forth the essential elements of an antitrust claim and it fails to allege that the plaintiffs-petitioners suffered any particular injury as a result of the alleged conspiracy. Such an insufficient pleading, even on the part of a *pro se* litigant, fails to state a claim upon which relief can be granted. As this Court stated in the *Arzee* case,

> "True, the complaint does allege that the purpose of the conspiracy was 'arbitrarily, unlawfully, unreasonably and knowingly [to] prevent, suppress and eliminate competition' and to 'establish and maintain unreasonably high, excessive, monopolistic and non-competitive prices'. But this is not enough. These are merely conclusions of the pleader. Conclusions of law are not enough to state a claim upon which relief may be granted. Alexander v. Texas Co., supra at 40, and cases cited therein; United Grocers' Co. v. Sau-Sea Foods, 150 F. Supp. 267, 269 (S.D. N.Y. 1957)."

Arzee Supply Corp. of Conn. v. *Ruberoid Co.*, 222 F. Supp. 237, 241 (D. Conn. 1963).

See also: *Klebanow* v. *New York Produce Exchange*, 344 F.2d 294 (2d Cir. 1965).

The petitioners make much of the *United States* v. *American Bar Association* complaint as a reason for the granting of the writ of certiorari. They also rely on the cases of *Goldfarb* v. *Virginia Bar*, 421 U.S. 773, 95 S.Ct. 2004 (June 16, 1975) and *Bates* v. *Arizona*, 555 P.2d 640, Prob. Jur. Noted, 97 S.Ct. 53, Oct. 4, 1976, No. 76-316. The *American Bar* matter is still in the pleading stage. The petitioners present no evidence of price-fixing to bring them within the *Goldfarb* case, nor do they present any evidence of harm to them by controlled advertising to bring them within the *Bates* case. Furthermore, there is no evidence of any interstate activities by these defendants-respondents with respect to the underlying state divorce proceedings.

IV. MISCELLANEOUS CONSIDERATIONS

A. Federalism and Comity

In addition, the Complaint raised the question of a "back door" contravention of well established principles of federalism and comity. As stated only recently by the United States Supreme Court:

"The seriousness of federal judicial interference with state civil functions has long been recognized by this Court. We have consistently required that when federal courts are confronted with requests for such relief, they should abide by standards of restraint that go well beyond those of private equity jurisprudence. . . ."

Huffman v. *Pursue*, —— U.S. ——, 95 S.Ct. 1200 at 1208 (March 18, 1975).

These considerations have been held controlling even where a state Court judgment has already been rendered, and not merely when the state trial is still underway. See *id.* at 1210. The Court has also previously ruled:

". . . It is settled that the prohibition of § 2283 cannot be evaded by addressing the order to the parties or prohibiting utilization of the results of a completed state proceeding. Oklahoma Packing Co. v. Oklahoma Gas & Electric Co., 309 U.S. 4, 9, 60 S.Ct. 215, 218, 84 L.Ed. 537 (1940); Hill v. Martin, 296 U.S. 393, 403, 56 S.Ct. 278, 282, 80 L.Ed. 293 (1935). . . ."

Atlantic Coast Line R. Co. v. *Brotherhood of Locomotive Engineers, et al*, 398 U.S. 281 at 288 (1970).

See also: *Brown* v. *Chastain*, 416 F.2d 1012 (5th Cir. 1969), *cert. den.* 397 U.S. 951.

CONCLUSION

It is clear that there are no special and important reasons for granting a writ of certiorari in this case, a writ which, of course, is not a matter of right but of sound judicial discretion. An example of the insubstantiality of the underlying claims is clearly demonstrated by the unwarranted attack upon L. Patrick Gray on pages 4, 6, 7 and 8 of the Petition

with no factual allegations that he caused these petitioners any harm. The decision by the District Court and its affirmance by the United States Court of Appeals for the Second Circuit are fully consistent with applicable rulings of this Court. There is absolutely no showing that the lower courts have departed from the accepted and usual course of judicial proceedings so as to call for the exercise of this Court's power of supervision, within the meaning of Rule 19, Revised Rules of the Supreme Court.

It is, therefore, respectfully submitted that the Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit in this case is completely without merit and should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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